IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1028 of 1987
With
FIRST APPEAL No. 1094 of 1987

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VITHALBHAI AMBALAL PANDYA - Appellant(s)
Versus
VINAYAK PUNAMBHAI PATEL & 2 - Defendant(s)

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Appearance :
MR SN SOPARKAR for Appellant(s) : 1,
MR DF AMIN for Defendant(s) : 1 - 2.
MR PV NANAVATI for Defendant(s) : 3,
MS SHRADDHA TRIVEDI for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 27/08/2007

ORAL JUDGMENT

1. Heard Mr.N.C. Thakker, learned counsel for the appellant Mr.D.F. Amin, learned counsel for the respondent Nos.1 and 2 and Mr.V.C. Thomas, learned counsel for the

respondent No.3 in First Appeal No. 1028 of 1987 and Mr.V.C. Thomas, learned counsel for the appellant, Mr.Nirav C.Thakker, learned counsel for the respondent No.1 and Mr.D.F. Amin, learned counsel for the respondent Nos.2 and 3 in First Appeal No.1094 of 1987.

2. The claimants, being aggrieved by the award dtd.10/11/1986 passed by the Motor Accident Claim Tribunal (Main), Nadiad in Motor Accident Claim Petition No.913 of 1983, has filed First Appeal No.1028 of 1987 seeking enhancement, while the Insurance Company has filed First Appeal No.1094 of 1987 with a submission that the Insurance Company could not be held liable to make the payment of any amount.

3. As owner and driver have not filed any appeal challenging rashness and negligence on the part of the driver, occurrence of the accident and the liability of the owner and driver, this Court is not required to detail those facts. This Court would be required to decide that whether the Insurance Company is liable to answer the claim and whether the claimant is entitled to claim something more.

4. So far as the appeal of the Insurance Company is concerned, in view of the judgement of the Supreme Court in the matter of New India Assurance Company

Limited Vs. Devvati, 2007 (3) Scale, this court must hold that in case of all accident a person travelling as a gratuitous passenger or travelling with his goods and/or as a passenger for hire or reward, then, against the claim of such person or dependent, the Insurance Company cannot be held liable. Such person would not be a third party, but would, in fact, be a passenger in a goods vehicle, which the law does not allow.

5. First Appeal No.1094 of 1987 filed by the Insurance Company deserves to and is accordingly allowed.

6. So far as First Appeal No.1028 of 1987 filed by the claimant for enhancement is concerned, the tribunal has awarded a sum of Rs.25,000=00 under the head of pain, shock and suffering because of the amputation of the leg and has awarded Rs.75,000=00 under the head of loss of income. After hearing the learned counsel for the parties, I am unable to hold that the tribunal was unjustified in awarding these amounts or these amounts call for any enhancement. It was contended that the tribunal was unjustified in awarding a sum of Rs.1150=00 under the head of medical expenses against the claim of Rs.7000=00. Though Mr.Amin, learned counsel for the respondents – owner / driver has submitted that as the

details have not been furnished by the claimant, the tribunal was not unjustified in awarding the amount which was proved to have been paid. In the opinion of this Court, in a case of amputation of the leg below knee, when a person is treated in a private hospital, then, it would not be possible for any court to hold that such person was extended medical aid free of costs. Even if the claimant could not produce the material relating to his lodgment charges, operation charges, operation theater charges etc. then too, in case of amputation of leg and an operation in a private hospital, a claim in sum of Rs.7000=00 can not be held to be exaggerated. I award that claim in full. I award a sum of Rs.5850=00 in addition to what the tribunal has awarded. Similarly under the head of diet, I think that the tribunal erred in applying miser's approach in awarding Rs.300=00 only to a patient who has lost his leg and had to stay in hospital for almost about 37 days. Under the said head, in addition to award of Rs.300=00, I award a sum of Rs.1200=00. In addition to what has been awarded by the tribunal, I award a further sum of Rs.7050 in favour of the claimant.

7. The claimant would be entitled to claim this amount from

the owner and driver of the vehicle, the Insurance Company would not be liable to this amount.

8. I am told that the Insurance Company has deposited the amount, but it is not known to anybody that whether the said amount has been withdrawn by the claimant or not. In case, the amount is still lying with the tribunal, then, on an application by the Insurance Company the said amount shall be returned back to the Insurance Company. In case, the claimant has withdrawn the said amount, or the interest accrued thereon, then, the Insurance Company would be entitled to recover the said money from the owner and driver. First Appeal No. 1028 of 1987 is partly allowed.
9. Both the appeals are allowed to the extent indicated above. No costs.

(R.S. GARG, J.)

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